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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 CHANEL EPPS,

12 Plaintiff,

13 vs.

14 MICHAEL J. ASTRUE, Commissioner of
Social Security,

15 Defendant.

CASE NO. 09cv1380-WQH-WVG

ORDER

16 HAYES, Judge:

17 The matter before the Court is the review of the Report and Recommendation (Doc. #
18 25) issued by United States Magistrate Judge William V. Gallo, recommending that Plaintiff's
19 Motion for Summary Judgment (Doc. # 16) be denied and Defendant's Cross-Motion for
20 Summary Judgment (Doc. # 22) be granted.

21 **BACKGROUND**

22 On May 15, 2006, Plaintiff filed applications for supplemental security income benefits
23 and disability insurance benefits. Plaintiff's claim was denied at the initial level and upon
24 reconsideration. On February 18, 2009, a hearing was held at which Plaintiff appeared with
25 counsel and testified before an administrative law judge ("ALJ"). On March 17, 2009, the ALJ
26 issued a written decision finding that Plaintiff has not been under a disability, as defined in the
27 Social Security Act, since the Plaintiff's alleged disability onset date of December 15, 2005.
28 The ALJ's decision became the final decision of the Commissioner of Social Security when
the Appeals Council denied Plaintiff's request for review on April 23, 2009.

1 On June 25, 2009, Plaintiff, represented by counsel, commenced this action seeking
 2 judicial review of Defendant's decision pursuant to 42 U.S.C. § 405(g). On June 7, 2010,
 3 Plaintiff filed the Motion for Summary Judgment. (Doc. # 16). On July 23, 2010, Defendant
 4 filed the Cross-Motion for Summary Judgment. (Doc. # 22).

5 On August 13, 2010, the Magistrate Judge issued the Report and Recommendation.
 6 (Doc. # 25). The Report and Recommendation recommends that Plaintiff's Motion for
 7 Summary Judgment be denied and Defendant's Cross-Motion for Summary Judgment be
 8 granted. The Report and Recommendation concludes:

9 IT IS ORDERED that no later than September 3, 2010, any party to this
 10 action may file written objections with the Court and serve a copy on all parties.
 11 The document should be captioned 'Objections to Report and
 12 Recommendation.' ... The parties are advised that failure to file objections
 13 within the specified time may waive the right to raise those objections on appeal
 14 of the Court's order.

15 *Id.* at 20-21 (citing *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991)).

16 The docket reflects that no objections to the Report and Recommendation have been
 17 filed.

18 REVIEW OF THE REPORT AND RECOMMENDATION

19 The duties of the district court in connection with a report and recommendation of a
 20 magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b).
 21 The district judge must "make a de novo determination of those portions of the report ... to
 22 which objection is made," and "may accept, reject, or modify, in whole or in part, the findings
 23 or recommendations made by the magistrate." 28 U.S.C. § 636(b). The district court need not
 24 review de novo those portions of a Report and Recommendation to which neither party objects.
 25 *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d
 26 1114, 1121-22 (9th Cir. 2003) (en banc).

27 A court "will disturb the denial of benefits only if the decision contains legal error or
 28 is not supported by substantial evidence." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.
 2008) (quotation omitted). "Substantial evidence is such relevant evidence as a reasonable
 mind might accept as adequate to support a conclusion. The evidence must be more than a
 mere scintilla but not necessarily a preponderance." *Id.* (quotations omitted). Even if an ALJ

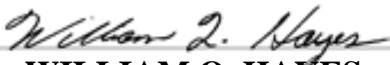
1 commits errors, “[a] decision of the ALJ will not be reversed for errors that are harmless.”
2 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *see also Stout v. Comm’r, Soc. Sec.*
3 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (“We have ... affirmed under the rubric of
4 harmless error where the mistake was nonprejudicial to the claimant or irrelevant to the ALJ’s
5 ultimate disability conclusion.”).

6 After review of the Report and Recommendation, the written opinion of the ALJ, the
7 administrative record, and the submissions of the parties, the Court concludes that the
8 Magistrate Judge correctly recommended that Plaintiff’s Motion for Summary Judgment be
9 denied and Defendant’s Cross-Motion for Summary Judgment be granted. The ALJ’s decision
10 to deny benefits is supported by substantial evidence, and to the extent the ALJ committed
11 errors, those errors were harmless.

12 CONCLUSION

13 IT IS HEREBY ORDERED that: (1) the Report and Recommendation (Doc. # 25) is
14 ADOPTED in its entirety; (2) Plaintiff’s Motion for Summary Judgment (Doc. # 16) is
15 DENIED; and (3) Defendant’s Cross-Motion for Summary Judgment (Doc. # 22) is
16 GRANTED. The Clerk shall enter judgment for Defendant and against Plaintiff.

17 DATED: September 13, 2010

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19 **WILLIAM Q. HAYES**
20 United States District Judge
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